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IMPARTIAL LAW—THE GUARDIAN OF LIBERTY—THE LAWYER'S OPPORTUNITY*

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IMPARTIAL law comprehends fairness in the enactment of the law, fairness in its administration, and fairness in its interpretation.

Liberty, or freedom, is less easily defined. We must have some background of history to understand the attributes to which we refer when we speak of ours as the land of the free.

I suppose one would be on safe ground in assuming that, ever since the cradle of civilization, the hearts and souls of men have entertained, in some concept, the aspiration and hope for freedom and liberty of the individual. Also, I believe we would be safe in saying that in the early days of political thought there was little manifestation of that aspiration and hope. The thought of liberty or freedom related to peoples rather than to individuals.

According to Biblical chronology, it was about 1491 B.C., when Moses led the children of Israel out of Egyptian slavery, after Moses, at the direction of Jehovah, said to Pharaoh, "Let my people go",[1] and after the plagues upon Egypt which followed Pharaoh's refusal.

Some 1500 years later, at the time of Christ, the people of Judaea were awaiting the coming of a political leader, the long awaited Messiah, to free them from the political domination of Rome.

In a book entitled *The Legacy of Greece,* edited by R. W. Livingstone and containing an essay on the "Political Thought" of Greece by Professor A. E. Zimmern, in contrasting the political

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[1] EXODUS 7. 16.

thought of ancient Greece with modern political thought, Professor Zimmern states:

> "Let us pass now to our second limitation, that arising not from the differences of scale but from the difference of outlook between Greek and modern speculation. We can best sum this up by saying that whereas modern political thought, like modern thought generally, works from the inner to the outer, from the individual to the state and society, the ancient thinkers habitually work in the opposite direction, setting the interests of the community or state above those of the individual. This is what Fustel de Coulanges intended to convey when he declared that ancient man had no conception of the meaning of liberty. Liberty is no doubt a somewhat confusing and ambiguous term; it is hard to cut it loose from its political associations, from national independence and democratic self-government. We can perhaps therefore improve upon the French writer by saying that the Greek political thinkers do not recognize, or do not make proper allowance for, the rights and responsibilities of the individual soul."[2]

In the ancient days, the people were so occupied in avoiding physical slavery by other peoples, and to that end so dependent upon the state, that they had little occasion to give philosophical consideration to the matter of the rights and liberties of the individual as against the power of the state, though both Greece and Rome did have advanced systems of law to determine the rights of citizens as among themselves.

The Anglo-American concept of individual liberty has a rather long history, even though it be of comparatively recent attainment as civilization has developed. It dates from shortly after the Norman invasion in 1066, when, under the feudal system then established in England, by 1100 A.D. the oppression of the barons by the kings had led to the barons' demanding and receiving from the king the "Charter of Liberties of Henry I". But afterwards old abuses were resumed and new ones established, with the result that in 1215 "Magna Carta" or "The Great Charter of Liberties" was wrested from King John at Runnymede.

Some 474 years later, in 1689, and only 100 years before the adoption of our own Federal Constitution, after the abdication of James II had been forced, and William and Mary had been invited to occupy the throne of England, the English Parliament adopted the "English Bill of Rights".

In 1776, George Mason wrote the "Virginia Declaration of

[2] THE LEGACY OF GREECE 329 (1937).

Rights" which provided a pattern for declarations of several of the other colonies and also furnished the thought for that best known statement of our American Declaration of Independence:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. . . ."

May we note the conditions under which it is declared that there is the right of the people to alter or abolish a government—when the form of government becomes destructive of the unalienable rights declared to exist by the first sentence of the Declaration.

I do not analyze or present the substance of the celebrated English declarations for the reason that, with condensation and changed phraseology, their principal import has been carried into our Federal Constitution by the first ten amendents thereto—particularly the first eight—which are usually referred to as the "Bill of Rights" of the Federal Constitution, and in respect to the states by the fourteenth amendment to that Constitution.

The fifth amendment to the Federal Constitution provides that "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . . ."

And the fourteenth amendment to the Federal Constitution provides:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . ."

In their respective constitutions, the several states have counterparts. That of our own state is very striking, and section 1 of article III of our state constitution, closely following Mason's Virginia Declaration of Rights" and the constitution of Virginia, states:

> "All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possesssing property, and of pursuing and obtaining happiness and safety."

Of the Bill of Rights, the late Mr. Justice Jackson, in his opinion in the case of *West Virginia State Board of Education* v. *Barnette,* said:

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."[3]

And, of the fourteenth amendment to the Federal Constitution, Mr. Justice Peckham, in the case of *Allgeyer v. Louisiana,* said:

> ". . . The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."[4]

Thus, we have embodied in the very philosophy of our government the concept that everything which the individual may be or have does not come from the state, but that the individual has certain rights with which he is endowed by his Creator. Minorities do not live only at the sufferance of majorities.

For the more complete protection of the inherent rights of man, our governments, both state and federal, are built upon another very basic principle, ordinarily referred to as "Montesquieu's Theory"—that, if justice is to be attained and liberty preserved, there must be the separation of powers in the exercise of the legislative, executive, and judicial functions.[5]

Another premise upon which our governments have been established is of fundamental significance; and that is, that our governments have been established upon the acceptance of a "private economy", frequently referred to today as "free enterprise".

Our observations, even in current history, of the operations of the socialist states would seem to provide all proof necessary to demonstrate the wisdom of the founding fathers in establishing

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[3] 319 U.S. 624, 638 (1943).
[4] 165 U.S. 578, 589 (1897).
[5] U.S. CONST. art. I, § 1, art. II, § 1, art. III, § 1; W. VA. CONST. art. 5, § 1.

our government upon the basis of free enterprise, since it is obvious to all of us that individual liberty cannot survive socialism. As will shortly be pointed out, even Karl Marx recognized that the private economy must first be destroyed if liberty is to be destroyed, and declared the communist objective to be to destroy both.

While throughout most of history, governments have been established largely in accordance with the necessities of the times, our government has been established not only upon the basis of the necessities of the times, but also upon the basis of ideals. And it has worked.

In speaking before the Filene Cooperative Association in Boston in May, 1905, the late Mr. Justice Brandeis said:

> "One hundred years ago the civilized world did not believe that it was possible that the people could rule themselves; they did not believe that it was possible to have government of the people, by the people, and for the people. America in the last century proved that democracy is a success."[6]

Indeed, it may be said that our adherence to ideals seems to have enabled us to meet the necessities of the times more readily than otherwise they may have been met.

Lawyers had much to do in the framing of our constitutions. In the drafting of our Federal Constitution, the names of many lawyers who took a leading part are legendary. Of the fifty-five members of the convention, thirty-one were lawyers.[7]

In a reprint from Volume I of the *Debates and Proceedings of the First Constitutional Convention in West Virginia,* entitled, "The Makers of West Virginia", our well-known historian Dr. C. H. Ambler lists seventeen of the sixty-one members as lawyers by profession. I have not conveniently found an authoritative listing of the occupations and professions of the members of our constitutional convention of 1872, but from the list of the names I have identified no less than seventeen as lawyers, several of whom later occupied the bench and many of whom had distinguished careers at the bar, and I am confident that the number was greater.

Viscount James Bryce, in his well known work, The American Commonwealth, viewed our American democracy objectively and, with his vast background of studies in political science, including the consideration of weaknesses and faults of democracies, pointed out the comparative lack in America of some of the faults which some philosophers thought to be inherent in democratic govern-

[6] BRANDEIS, THE CURSE OF BIGNESS 35 (1934).
[7] POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 178 (1953).

ment. He noted that "the tyranny of the majority" had historically been one of the weaknesses attributed to democratic societies. He described the tyranny of the majority as follows:

> "The expression 'tyranny of the majority' is commonly used to denote any abuse by the majority of the powers which they enjoy, in free countries under and through the law, and in all countries outside the law. Such abuse will not be tyrannous in the sense of being illegal, as men called a usurper like Dionysius of Syracuse or Louis Napoleon in France a tyrant, for in free countries whatever the majority chooses to do in the prescribed constitutional way will be legal. It will be tyrannous in the sense of the lines
>
> " 'O it is excellent
> To have a giant's strength, but it is tyrannous
> To use it like a giant.'
>
> That is to say, tyranny consists in the wanton or inequitable use of strength by the stronger, in the use of it to do things which one equal would not attempt against another. A majority is tyrannical when it decides without hearing the minority, when it suppresses fair and temperate criticism on its own acts, when it insists on restraining men in matters where restraint is not required by the common interest, when it forces men to contribute money to objects which they disapprove and which the common interest does not demand, when it subjects to social penalties persons who disagree from it in matters not vital to the common welfare. The element of tyrany lies in the wantonness of the act, a wantonness springing from the insolence which sense of overwhelming power breeds, or in the fact that it is a misuse for one purpose of authority granted for another. It consists not in the form of the act, which may be perfectly legal, but in the spirit and temper it reveals, and in the sense of injustice and oppression which it evokes in the minority.
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> "Philosophers have long since perceived that the same tendencies to a wanton or unjust abuse of power which exist in a despot or a ruling oligarchy may be expected in a democracy from the ruling majority, because they are tendencies incidental to human nature. . . ."[8]

Commenting on the lessening of bigotry and the increase of tolerance in America, Mr. Bryce observed that "the tyranny of the majority is no longer a blemish on the American system, ..."[9]

Later in his work, in noting some of the supposed faults of democracies, and in keeping with the thought of "the tyranny of the majority", Mr. Bryce observed: "The taxation of the rich for the benefit of the poor offers the greatest temptation to a majority

[8] 2 BRYCE, THE AMERICAN COMMONWEALTH 338 (1914).
[9] *Id.* at 345.

disposed to abuse its powers. . . ."[10] and noted that: "The two great national parties are not class parties, for, if we take the country as a whole, rich and poor are fairly represented in both of these parties. Neither proposes to overtax the rich. . . ."[11]
He also stated:

> "There are no struggles between the privileged and unprivileged orders, not even that perpetual strife of rich and poor which is the oldest disease of civilized states. One must not pronounce broadly that there are no classes, for in parts of the country social distinctions have begun to grow up. But for political purposes classes scarcely exist. . . ."[12]

We may note, however, that Mr. Bryce wrote in 1914, before the sixteenth amendment to the Federal Constitution had gotten into real operation and before the days of the NRA and the Wagner Act.

Our constitution was adopted at the time when the United States consisted of the thirteen original colonies along the Atlantic seaboard and comprised some three hundred twenty-five thousand square miles with a population of less than three million people, and when that population was largely rural and, except for a few traders, the economy was agricultural.

Of course the founding fathers foresaw expansions in area, increases in population, and industrialization. Whether any of them could fully envision our present day realizations, one may wonder; but need such wonder suggest doubt that the principles of political science and economics upon which they founded our government are the only principles upon which the liberty for which they strove can thrive.

We are now forty-eight states, comprising an area of some three million square miles, and with a population of about one hundred sixty-five millions, not including our territories. We have not less than five cities of populations in excess of one million, some of several millions. We are highly industrialized, and now even most of our agriculture is mechanized.

Modern technology calls for mass production, and mass production, in turn, has resulted in mass concentrations of population, both productive of significant economic and social problems which, in turn, present problems of government.

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[10] *Id.* at 625.
[11] *Id.* at 626.
[12] *Id.* at 647.

On top of our industrial growth and development, we have had, since 1914, World War I, the depression of 1929 and the early 30s, World War II, Korea, and the continuing Cold War.

And, not to be either ignored or belittled, there is the fact that since World War I we have had throughout the world a great surge of statism—socialism—which seems to have the quality of contagion. In this connection, every lawyer should read the little brief entitled, *Brief on Communism: Marxism—Leninism—Its Aims, Objectives and Practices,* published by the American Bar Association in 1951.

Time does not permit a comprehensive discussion of this brief on this occasion; but, to suggest food for thought, I quote the following extracts from pages 7, 8, and 9 of the *Brief,* which in turn quotes parts of the Communist Manifesto (1848), "The 'Theory' or Philosophy of Marx and Engels":

> " 'The theory of the Communists may be summed up in one single sentence: Abolition of private property.' "
>
> " 'And the abolition of this state of things is called by the bourgeois, abolition of individuality and freedom! And rightly so. The abolition of bourgeois individuality, bourgeois independence, and bourgeois freedom is undoubtedly aimed at.' "
>
> " 'In a word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend.' "
>
> " 'The charges against Communism made from a religious, a philosophical, and, generally, from an ideological standpoint, are not deserving of serious examination.' "
>
> " 'The proletariat will use its political supremacy to wrest, by degrees, all capital from the bourgeoise, to centralize all instruments of production in the hands of the state, i.e., of the proletariat organized as the ruling class.' "

After these statements, the *Brief* notes that:

> "The Manifesto then lays down ten preliminary steps to be attended before the Dictatorship of the Proletariat takes over."

The ten steps are:

> " '1. Abolition of property in land and application of all rents of land to public purposes.
>
> "2. A heavy progressive or graduated income tax.
>
> "3. Abolition of all right of inheritance.
>
> "4. Confiscation of the property of all emigrants and rebels.
>
> "5. Centralization of credit in the hands of the state, by means of a national bank with state capital and an exclusive monopoly.
>
> "6. Centralization of the means of communication and transport in the hands of the state.

"7. Extension of factories and instruments of production owned by the state; the bringing into cultivation of waste lands, and the improvement of the soil generally in accordance with a common plan.

"8. Equal obligation of all to work. Establishment of industrial armies, especially for agriculture.

"9. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country, by a more equable distribution of the population over the country.

"10. Free education for all children in public schools. Abolition of child factory labour in its present form. Combination of education with industrial production, etc.' "

"The final paragraph of the Manifesto:

" 'The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win.' "

And, as further food for thought, let us remember that unnecessary and extreme regulation and curtailment of the basic rights of the individual, including his use of private property, is little different from their abolition, and that a right of inheritance, if excessively taxed, may be seriously diluted. Our present federal income taxation speaks for itself.

Let it not be thought that I am, by this quotation, introducing into my theme a scare of communism. Socialism by any other name is no better. At the same time, let us not ignore some of the parallels between the Marxist plans and some of the emergency or experimental measures to which we have resorted from time to time.

The movement in the United States differs from the bold declarations of the Marxists. Alvin A. Burger, Research Director in the Council of State Chambers of Commerce, in an article entitled, "Our Double-standard War for Freedom", comments upon Harold Laski's book entitled *Reflections on the Revolution of Our Time,* and says:

"Harold Laski maintained that Socialism would never come to America or Britain by resort to violence, but must be attained by seizing upon a period of great national crisis, such as war, to obtain the adoption of 'emergency' measures which, added together, would constitute the Socialist program. The word 'Socialism' must never enter the picture. It would all be done in the name of democracy."[13]

[13] 48 PUB. UTIL. FORT. 793 (1951).

Time does bring changes, and all of us must recognize the fact that the problems of government today are far more complex than they were in 1789 or 1872, and, if government is to survive, it must meet the indispensable governmental needs of the people whose government it is. But, if the principles upon which our government was founded are eternal principles and right, cannot all proper governmental needs be met without destroying the structure and the individual liberty which it was designed to support? And, if liberty be our objective, should we not restrain programs and eschew proposals which bear too close a resemblance to some of the steps which have been designated as those by which communism or socialism, which are incompatible with liberty, may be approached?

In 1934, a collection of talks and opinions of the late Mr. Justice Brandeis was published in a book entitled, *The Curse of Bigness.* It was to industrial monopolies to which Mr. Brandeis' writings were particularly directed. Modern technology makes bigness, though not monopoly, in industry inevitable. Every village cannot have its automobile or airplane maker, as most of the villages in the days gone by had their carriage makers. And, as I have already noted, this bignesss in industry, resulting in large measure from technological developments, inevitably presents governmental problems.

Let me not leave the thought that technology may be an evil. To the contrary, it is a blessing. It has been an important factor in relieving drudgery and in bringing higher standards of living. It will continue to contribute to the betterment of man, even though it may also contribute governmental problems.

Today it is not the bigness of industry that constitutes the most serious threat to our liberties. The most serious strain upon our liberties is the bigness of government.

Bigness of government undoubtedly is an invitation to statism, but we can no longer avoid bigness in government. Yet, I believe we can have big government—no bigger than is indispensably necessary, however—, and still not have statism.

If our people will but make liberty and not materialism the goal, then the bigness of government which our times seem to force upon us will not be statism but will be that some democratic government which our forefathers established, embodying the same principles, adapted to twentieth century conditions without imperiling the cherished liberty of a free people.

We may well pause to consider whether some of the bigness which we have even today is attributable to the governmental needs of the people or may possibly, in part, be attributable to the contagion of statism or socialism, which all must concede has, as least to some degree, infected us. If we can allay the results of the infection, perhaps we may be happy in finding that the needs of the people, even though calling for a big government, do not call for one quite so big as some may envision or may have envisioned.

We have noted the leading role of lawyers in the forming of our constitutions. I call attention to a more recent accomplishment which is almost wholly attributable to lawyers acting through a special committee of the American Bar Association. I refer to the Administrative Procedure Act of 1946.

When government gets big, the easier way out and the tendency is to govern more and more by boards and commissions. To some extent, this is inevitable. But, unless government by boards and commissions be carefully circumscribed, a challenge is posed to the functioning of Montesquieu's theory, and the separation of powers, fundamental to fairness and justice and to our liberties, is not adequately preserved. When a board is the legislator, the administrator, and the judiciary, and its personnel, however honorable, is overly zealous in endeavoring to carry out what the members of the board conceive to be the objectives and purposes for which they have been appointed, justice is frequently strained.

True, the laws creating such boards and commissions usually provide for judicial review by our regularly constituted courts. But when either the statute expressly provides or is judicially interpreted as providing that our courts shall decline all review of facts if there be any evidence, not substantial evidence, to support the findings of fact of the board or commission,[14] and our courts go further and adopt the "expertise" or the "special administrative competency" principle,[15] such right of appeal becomes very shadowy and the constitutional separation of powers becomes very dubious.

Some of the activities of some such boards and commissions became so shocking to the sense of justice as to be reminiscent of some of the complaints which resulted in the declaration of Magna Carta in 1215:

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[14] See N.L.R.B. v. Link-Belt Co., 311 U.S. 584 (1941).

[15] See Gray v. Powell, 314 U.S. 402 (1941); SEC v. Chenery Corp., 318 U.S 80 (1943).

> "We will not make justiciars, constables, sheriffs or bailiffs except of such as know the law of the realm and are well inclined to observe it."[16]

and in the declaration of the English Bill of Rights of 1689:

> "That the commission for erecting the late court of commissioners for ecclesiastical causes and all other commissions and courts of like nature are illegal and pernicious."[17]

One may read with profit an article entitled, "Nazi Justice and the Democratic Approach: the Debasement of Germany's Legal System", by Maximillian Koessler, in the August, 1950, issue of the *American Bar Association Journal,* to get a picture of the debasement of justice by executive domination of the regularly constituted judiciary and by executive creation of special tribunals subject to executive direction.

We, fortunately, have not had a Hitler to destroy our legal system, but indifference to our liberties might well permit the withering of our safeguards. And we know that we have not been entirely free of some influences which would rule or ruin and which, at least for a time, have found boards and commissions convenient for their purposes.

The American Bar Assoication took cognizance of the situation in our federal government and, over strong and persistent opposition, even a presidential veto, ultimately brought about the enactment of the Administrative Procedure Act of 1946 which provided at least a degree of independence for examiners and further reestablished the *substantial,* rather than the *any,* evidence rule.[18]

Only recently I have noted from the press that, notwithstanding the enactment of the Administrative Procedure Act, to secure a more effective separation of the judicial functions from the executive, to guard against the dangers inherent in government by boards and commissions—and the necessity for some boards and commissions is of course accepted by all—, the Hoover report has recommended the establishment of an entirely independent administrative court.

I have mentioned Viscount Bryce's observation in *The American Commonwealth,* wherein he noted that in the United States there had been little tendency to tax the rich for the benefit of the poor. I also noted that his writing was before the time when the sixteenth amendment to the Federal Constitution, the income

[16] ADAMS & STEPHENS, SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY 48 (1937).

[17] *Id.* at 464.

[18] 60 STAT. 243, 244 (1946), 5 U.S.C. §§ 1009(e), 1010 (1952).

tax amendment, had gotten well under way. But now we know better. Sharply progressive income taxes, and likewise sharply progressive estate taxes, seriously threaten the accumulation and preservation of the capital, especially the venture or risk capital, necessary to support our economy of private enterprise which is basic to our American democracy and to the liberties which our government was ordained to establish and preserve.

When one notes the relatively small over-all yield from the extremely high rates applicable to incomes, not just in the high brackets but in the above-average brackets, one can hardly be suspicioned of having illusions if he should possibly entertain the thought that one objective of such taxation might be the destruction or crippling of private enterprise itself.

I make this observation, not with any intention or expectation of creating any sympathy for those who, due either to hard work or good fortune, are in the so-called higher brackets, but in defense of our private economy and in support of our liberty to which it is indispensable, as distinguished from the slavery of socialism. And we need not close our eyes to the fact that, in more instances than most of us can enumerate, our government has gone into many businesses, some competitive with private enterprise, and at times has threatened to enter additional fields.

I have also adverted to Bryce's observations in 1914, that there had been little class struggle in the United States and that "for political purposes classes scarcely exist". Again, 1914 was prior to NRA and the Wagner Act.

All students of history recognize that class struggle has been a part of the history of the world, and it would not be unexpected that there might be some partial counterpart in our own country. But the very theory of our government—liberty for all under impartial law—was calculated to exclude, so far as humanly possible, class considerations from our government, and, in accordance with the observations of Bryce in 1914, our government did so operate.

We do not have in America a proletariat of the Karl Marx concept, which Webster has defined as "a laborer for day wages not possessed of capital." We have large numbers who work for day wages, but only a small portion of them are not at least little capitalists. Many own their homes; still more their automobiles; many have bank deposits and have insurance, individual or group, which means that they have at least an indirect financial interest in private enterprise. Certainly all have a political interest in the only known economy under which individual liberty may thrive.

And yet in these more recent years we have witnessed mighty efforts to stimulate class consciousness as a prelude to a "tyranny of the majority" in this country. It is not, in my opinion, a natural economic or social development or movement, but is largely an artificial effort calculated to create political power for some ever-available little Caesars, rather than to improve the economic and social conditions of our people or of any part thereof.

We have seen blows struck at our traditional liberties and blows continue to be struck. Time does not permit my mentioning more than two illustrations, and these are current.

For several years, at nearly every session of our own state legislature, there have been introduced bills known as anti-injunction bills to be applicable not to the utilization of this time-honored remedy generally, but only in respect to so-called labor disputes. Fortunately, no such bill has yet passed. A bill of that kind was presented in the most recent regular session of our legislature, but the bill did not pass until it had been so amended as to be made of general applicability and to be but substantially declaratory of our already-established practice.

But, are any of us so blind as not to know the objectives of such bills? The most basic of all governmental functions, from the earliest days of history until now, has been that of preserving peace and order in the community and protecting the lives and property of the citizens. The injunctive process is one of maintaining the *status quo* until disputes may be settled in an orderly fashion and of protecting, in the meantime, the lives and properties of those involved.

Certainly, a process which prevents the commission of wrong is preferable to one which would only give redress for wrongs already committed; and everyone knows that in the field of labor contro versies the legal rights or procedures for the redress of wrongs already committed are, more often than not, without substance.

Lawless activities in the name of labor strife which have blighted the fair name of our state in recent years leave no doubt that the enactment of such proposals could be considered in no light other than as an invitation to or license for anarchy.

Let those who love liberty and respect law, especially lawyers, pause long before lending their support to any such measures, which, if effective, could only cripple or destroy both liberty and law.

My other illustration relates to so-called "right-to-work" laws. The Wagner Act was passed in 1937 on the theory that it was needed to protect the rights of individuals to join unions. Under

the administration of the National Labor Relations Board, and the tolerance of the congress and the courts, it shortly expanded into an act which compelled the joining not only of some union, but of a particular union in many instances, notwithstanding the laws of some states to the contrary. Then when the Wagner Act was amended by the Labor-Management Relations Act, commonly referred to as the Taft-Hartley Act, to give appropriate recognition to the right-to-work laws of the states, the Labor-Management Relations Act has been characterized as a "slave labor act." And in the congress today there is a strong movement to amend the Labor-Management Relations Act so as to again make ineffective the laws of the some eighteen states which have the right-to-work laws.

Can there be any individual liberty of more importance to the citizen than the right to engage in honest labor to provide for the support and maintenance of his family and himself? Liberty does not bloom when there does not exist the right to join or not to join a union, as the individual may elect. Liberty does not even bud when one is compelled to join a union whether or not he desires to join that particular union or any union at all. I suggest for your reading the editorial in the March 19, 1955, issue of *The Saturday Evening Post,* entitled, "There's Also the Right Not to Join a Union."

Let us remember that Viscount Bryce, in illustrating his meaning of "the tyranny of the majority", observed, ". . . tyranny consists in the wanton or inequitable use of strength by the stronger . . ." when, among other things, "it forces men to contribute money to objects which they disapprove and which the common interest does not demand. . . ."[19]

Yes, the tremendous growth of our country, in area and population and in world-wide influence, advanced technology, with the accompanying concentrations of population incident thereto; successive wars; the depression of nineteen twenty-nine and the early thirties; Korea; and the continuing Cold War, make it imperative that we have a strong government and a government big enough to meet the proper demands upon it. But does the fact that we cannot escape bigness in government mean that we cannot escape statism? Does it mean that our people have no choice other than that of those to whom Professor Raleigh C. Minor referred as the *allodial* proprietors who, following the Norman Invasion, being exposed without any adequate legal protection, ". . . were fain to take shelter within the feudal association, and rendering their

[19] 2 BRYCE, THE AMERICAN COMMONWEALTH 338.

lands to the king, were content to receive them back upon the terms of fealty and homage, preferring the security of vassals to the unprotected dignity of freemen."[20]

Such may have been the dilemma of those of early Britain, but it is not ours. Our strength has been in the liberty of our people. Our liberty can be preserved and may continue to be our strength, whatever the proper demands upon our governments may be and however big our governments must be to meet them. The demands will be fewer and the governments smaller with liberty than without.

Unfortunately, humanity has not yet progressed so far that we can hope for the most penetrating vision by all of our people in respect to our economic, political, and social problems and of the part to be played by government therein, however honest, industrious, capable, and thrifty they may be. Economics and political science is not the field of thinking of everyone; but I do believe that of the great number of our people the vast majority, with sound and sincere leadership, have the capabilities of entertaining the vision and of having the understanding which will lead to the right, and the character to support it; the appreciation that the preservation of law and order is basic to liberty; that the destruction of capital can lead only to statism; that in the long history of civilization the permanent advance of humanity has always come through liberty and a private economy and not through slavery and statism; and that liberty and free enterprise are secure only when based upon impartial law impartially administered.

If these capabilities for understanding are to be developed and the vast majority of our people are to have this vision and understanding, are to get and hold this conviction, we must have leadership of vision, conviction, courage, and integrity—the vision to see that happiness exists in the human soul only when the individual has liberty; that liberty exists only when there is a private economy and a democratic government; the conviction of the right of the vision; the courage to stand by that conviction; and the integrity to reject all lures of demagoguery.

The Honorable Arthur T. Vanderbilt, presently the Chief Justice of the Supreme Court of New Jersey, a distinguished lawyer, teacher, and jurist, some years ago the President of the American Bar Association, and in whose honor the recently-erected New York University Law Center, of which law school he had formerly been the dean, was appropriately named, is quoted as having said:

[20] 1 MINOR, REAL PROPERTY 5 (2d ed. 1928).

> "Lawyers have traditionally been the exponents of individual freedom. Whatever freedom our citizens have today has in large measure been created and preserved by lawyers and judges."[21]

Judge Vanderbilt is right. Throughout history lawyers have provided their full share of this vision, conviction, courage, and integrity. They have been leaders of our constitutional conventions. They have been leaders in our legislative assemblies. They have occupied our judicial benches before which others of them have been advocates of freedom. Many have supplied such constructive leadership from executive offices. In their private lives they have been leaders of public thought in the communities of their influence.

The opportunities for such leadership have not passed. They confront every lawyer today. Yes, it is something more than an opportunity for lawyers—it is a challenge to lawyers. A challenge to reappraise the dignity and liberty of the individual; to re-examine the foundations upon which individual liberty has been established and thrived—impartial law and private enterprise—; to develop an awareness that those principles are right; with renewed and strengthened convictions, to eschew demagoguery and all infections of socialistic statism; and, with steadfast courage and zeal, to promote and defend our proven institutions without which individual liberty cannot survive and without which, together with the liberty which they nourish, our nation cannot retain that strength which not only our own people but the people of the world today so badly need.

To meet the challenge is the lawyer's opportunity.

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[21] Hugus, *The National Economy in Time of Crisis: Its Meaning to Lawyers and Their Clients,* 1 W. VA. STATE BAR NEWS 110 (1952).